* IN THE HIGH COURT OF DELHI

\+ **ARB.PET.No.106 of 2006**

% Date of decision : 02.05.2007

SHRI V.K. NAYAR ...PETITIONER

Through: Mr.Sandeep Sethi, Sr. Advocate with Mr.Aly Mirza, Advocate

- VERSUS -

SHRI G.P. NAYAR & ANR. ...RESPONDENTS

Through: Mr.Sudhanshu Batra & Mr.Bhuvan Gugnani, Advocates for respondent no.1.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

1. Whether the Reporters of local papers may be allowed to see the judgment? No

2. To be referred to Reporter or not? No

3. Whether the judgment should be reported in the Digest? No

SANJAY KISHAN KAUL, J. (ORAL)

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as

the said Act) seeking reference of the disputes to arbitration.

2. The father of the petitioner and respondent no.1 were brothers. The dispute pertains to a partnership firm M/s Haryana Rang Udyog, respondent no.2. The partnership was originally constituted in 1966 with the petitioner as a partner to the extent of 90% share which got diluted over a period of time. The petitioner finally retired from the partnership firm on 12.5.1980. The firm was reconstituted on 10.3.1987 with respondent no.1 and the mother of the petitioner, late Smt.Padma Vati Nayar, as partners, with respondent no.1 having no rights in the assets of the firm. This was followed by an MoU being executed on 28.6.1997 having four parties. These parties were the petitioner, late Smt.Padma Vati Nayar, respondent no.1 and Mr.Sandeep Nayar, son of respondent no.1. The MoU, inter alia, provided for division of assets including immovable property in a particular manner between the parties. It is not necessary to go into the details of the mode and manner of division. Suffice to say that this MoU contained an arbitration clause in the following terms:

> 14.“The Understanding arrived at between the parties has been reduced in writing above. However, if there is any misunderstanding or dispute between the parties with respect to this Memorandum of Understanding, the parties will try to resolve their dispute in the following manner:

(a) Firstly, one member each of both the families shall sit together and discuss the matter between themselves to arrive at an amicable peaceful settlement. It is further made clear that no member of the family shall create a communication gap between the two families, since both the families agree that by due communication between the parties, the dispute shall always be settled peacefully and amicably.

(b) However, if the first step discussed in para (a) above does not bring fruitful results, then both the parties shall appoint a common known person as an Arbitrator, then the efforts shall be made to resolve the misunderstanding or differences by holding personal discussions between one member each from both the families in the presence of the Arbitrator."

3. There was another MoU also executed on 8.4.1989, prior to the aforesaid MoU between the petitioner, late Smt.Padma Vati Nayar and the sisters of the petitioner for devolution of rights in favour of the petitioner to the exclusion of his sisters. Late Smt.Padma Vati Nayar also stated to have executed a Will dated 26.5.1987 making bequeath in favour of the petitioner. Late Smt.Padma Vati Nayar passed away on 23.1.2005.

4. Disputes and differences are stated to have arisen between the parties to the MoU resulting in filing of the present petition. This petition is resisted by the respondents. This resistance arises out of an alleged fresh MoU stated to have been executed on 3.9.1998 between respondent no.1 and late Smt.Padma Vati Nayar in terms

whereof the rights in respect of the assets of the firm instead of devolving on the petitioner were to devolve on the sisters of the petitioner. Late Smt.Padma Vati Nayar is also alleged to have executed another Will dated 12.8.1999 making bequeaths in favour of a daughter. This fresh MoU also contains an arbitration clause.

5. In the nutshell, the dispute is while under the earlier Will of late Smt.Padma Vati Nayar as also the MoU dated 28.6.1997 the interest in the partnership firm of late Smt.Padma Vati Nayar was to devolve on the petitioner, by the subsequent arrangement of the fresh MoU alleged to have been executed on 3.9.1998 and the subsequent Will dated 12.8.1999, the same was to devolve on the sisters of the petitioner.

6. Learned counsel for respondent no.1 further submits that the sisters of the petitioner have also filed probate proceedings for grant of probate of the Will dated 12.8.1999. The petitioner has now received the notice in the said probate petition. The principal contention of the learned counsel for the respondent is that in terms of the subsequent MoU dated 3.9.1998, though the same also contains an arbitration clause, the rights devolve on the sisters of the petitioner who are not parties to the MoU and thus, the reference to arbitration would not be appropriate remedy for

adjudication of the disputes. This plea is sought to be supported by the factum of the probate petition having been filed and it is canvassed that the petitioner ought to have filed civil proceedings for adjudication of the disputes in which his sister would have to be made party.

7. On consideration of the matter, I am unable to accept the plea of the learned counsel for the respondent. There is no dispute that the MoU dated 28.6.1997 was executed. Whether it created any rights in favour of the petitioner which were not capable of being extinguished, is a matter for the arbitrator to consider since indisputably the subsequent MoU dated 3.9.1998 does seek to extinguish the rights, if any. The petitioner and respondent no.1 are parties to the MoU dated 28.6.1998 which contains arbitration clause No.14. The subequent MoU dated 3.9.1998 also contains an arbitration clause. The subsequent MoU dated 3.9.1998 does not make the sisters of the petitioner parties. One cannot obviate the possibility of further litigation which may arise by the sisters of the petitioner agitating their rights, but that is not something which can be taken into consideration to frustrate the arbitration clause agreed to between the parties. The rights and liabilities of the petitioner and respondent no.1 have to be governed by the MoU

dated 28.6.1997 and the consequences of the subsequent MoU dated 3.9.1998 would be the aspect to be determined by the arbitrator.

8. In view of the aforesaid, I deem it appropriate that a reference of the disputes between the parties be made arising out of the MoU dated 28.6.1997 making it clear that the effect of the alleged MoU dated 3.9.1998 can also be examined by the arbitrator.

9. Ms.Justice (Retd.) Usha Mehra is appointed as the sole arbitrator to enter upon reference and adjudicate the disputes between the parties. The sitting fee will be fixed by the arbitrator herself. The total fee for the arbitration shall, however, bear a ceiling of Rs.2.00 lacs (Rupees Two Lacs only) apart from out of pocket expenses, to be shared equally between the petitioner and respondent no.1.

10. The petition is allowed in the aforesaid terms, leaving the parties to bear their own costs.

MAY 02, 2007 SANJAY KISHAN KAUL, J.
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